

Response to Final Office Action Dated 10 November 2003

Reply to Office Action of October 20, 2003

REMARKS/ARGUMENTS

In this Action, made final, the Examiner repeated the previous rejection of all pending claims (1-24 and 27-59) under 35 U.S.C. §103(a) over Walker et al. in view of Bushey et al. This rejection is again respectfully traversed.

In each instance, the Examiner found unpersuasive applicant's arguments of patentability of his claims over the references. It's no wonder! In each instance the Examiner has ignored the specific recitations of applicant's claims and has asserted a correspondence between the teaching of the references and some abstracted and generalized concept of applicant's claims. But in no instance has the Examiner shown – or has even attempted to show – that the references disclose the exact matter that is actually recited in applicant's claims.

The Examiner's refutations of applicant's arguments for patentability are inadequate. The burden of proof of unpatentability is on the Examiner. The Examiner must make a prima-facie case of unpatentability by showing that the applied references teach what the claims recite. This the Examiner has failed to do. The Examiner has merely shown that the references have teachings which generally relate to what applicants claim: he has not shown that the references have teachings which correspond to what applicant claims. Hence, applicant's claims have not been shown to be unpatentable over the applied references.

Turning to the exact recitations of the claims, applicant had pointed out previously that independent claims 1, 9, 27/1, 27/9, 28, 29, 32, 33, 36, and 44 recite "a measure of how the resource is spending time compared with other resources and goals of the individual resource," and has argued that there is no comparable teaching in Bushey et al. The Examiner found applicant's arguments unpersuasive because "Bushey does teach incorporation of goals in that 'the invention includes calculating and constructing the agent model

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using sales strategies' (column 3, lines 60-62), where strategies are the definitions of the goals and the means by which the goals are achieved."

The Examiner's response does not address applicant's argument. Even if the Examiner's assertion is completely accurate, it still does not show that Bushey et al. disclose "a measure of how the resource is spending time compared with other resources and goals of individual resources."

The Examiner dismissed applicant's other arguments explaining why Bushey et al. do not disclose "measuring how a resource is spending its time compared with other resources and goals of the individual resource", by saying that "Bushey does teach how an agent spends their time in that 'agent availability information from at least two agents' (column 4, lines 55-56), teaches that if an agent is not available, then they are spending their time working and if said agent is available, then they are spending their time not working and are in fact waiting to be employed."

Once again, even if the Examiner's assertion is completely accurate, it still does not show that Bushey et al. disclose "a measure of how the resource is spending time compared with other resources and goals of the individual resource" (emphasis added). The Examiner has failed to show how determining and indicating the busy/idle status of individual agents includes, or even implies, a measure of how an agent is spending time compared with other agents and goals of the individual agent. Hence, the Examiner has failed to make a *prima-facie* case of unpatentability.

Applicant had pointed out previously that independent claims 13, 21, 27/13, 27/21, 30, 31, 34, 35, 48, and 56 recite "a measure of how the work item is treated compared to other work items and treatment goals of the individual work item," and has argued that there is no comparable teaching in Bushey et al. The Examiner found applicant's argument unpersuasive because "Bushey does teach incorporation of goals in that 'the invention includes calculating and constructing the agent model using sales strategies'

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(column 3, lines 60-62), where strategies are the definitions of goals and the means by which goals are achieved.”

Once again, the Examiner’s response does not address applicant’s argument. Even if the Examiner’s assertion is completely accurate, it still does not show that Bushey et al. disclose “a measure of how the work item is treated compared to other work items and treatment goals of the individual work item.”

Moreover, this is the same teaching that the Examiner identified previously as disclosing “a measure of how the resource is spending time compared with other resources and goals of the individual resource.” So which is it, the one or the other? Or, does it teach both, and if so, how? The Examiner does not say.

The Examiner also found applicant’s argument unpersuasive because “Bushey does in fact teach how a work item is treated with respect to other work items in that ‘performance optimizing calculations are used to generate a match score’ (column 4, lines 4-6), which is how matching occurs. Matches are determined by the result of performance optimization calculations, which is a calculation that does in fact relate work items to each other.”

The Examiner’s characterization of Bushey et al.’s disclosure is inaccurate. The passage cited by the Examiner states in full that “performance optimizing calculations are used to generate a match score for each of the at least two agents” (emphasis added). Thus, these measures are measures for resources/agents and not for work items. Moreover, the performance-optimization calculations indicate the degree of match between a plurality of resources and one work item, not between a plurality of work items. How resources match a work item gives no indication whatsoever of “how the work item is treated compared to other work items and treatment goals of the individual work item” (emphasis added).

Applicant had pointed out previously that claims 2, 14, 27/2, 27/14, 37, and 49 recite using a business value weight and a work item weight, both

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corresponding to the work item, to weigh the business value and value to the work item. In response, the Examiner asserted that "Walker does teach weighting in teaching a combination 'in the combination of technicians and jobs for which the total of the technician/job cost value is a minimum' (column 7, lines 32-34). The waiting is the usage of the attributes that determine the technician/job cost value."

The Examiner's response does not address applicant's arguments. That Bushey et al. teach the general concept of weighting of values does not mean that Bushey et al. teach the particular types of weights for the particular types of measures as are recited in applicant's claims. The Examiner has failed to show that such particular weightings are disclosed in Bushey et al.

Applicant had pointed out previously that claims 3, 15, 27/3, 27/15, 38, and 50 define a weighted business value as "a product of (a) the business value weight corresponding to the work item, and (b) a sum of products of a level of each of said needed skill of the resource and a weight of said needed skill of the work item." The Examiner responded that "Walker does teach 'skill type distribution' (column 15, lines 8-9), wherein by definition of the statistical concept of a distribution, a plurality of factors or levels must in fact exist for a distribution to be calculated," and that Bushey et al. teach incorporation of goals.

The Examiner's response does not address applicant's argument. Even if the Examiner's assertion is completely accurate, it still does not show that Walker et al., either alone or in combination with Bushey et al., teach a weighted business value that is "a product of (a) the business value weight corresponding to the work item, and (b) a sum of products of a level of each of said needed skill of the resource and a weight of said needed skill of the work item."

The Examiner further responded that "a projected total cost and the value of the cost function for a job as taught by Bushey are in fact a sum of all the costs associated with a job." Once again, even if the Examiner's assertion

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is completely accurate, it does not show that Bushey et al. teach the particular computation of the particular weights and values recited in claims 3, 15, 27/3, 27/15, 38, and 50.

With respect to claims 4, 16, 27/4, 27/16, 39, and 51, applicant had pointed out that these claims recite that the sums of products recited in the antecedent claims are scaled sums and the treatments are scaled treatments, and that no corresponding teaching can be found in Bushey et al. The Examiner's response was a verbatim repetition of his response to claim 15. He did not even bother to assert that Bushey et al. disclose scaling. Hence, the Examiner's response is totally non-responsive.

With respect to claims 17, 27/17, and 52, applicant had pointed out that these claims recite that selecting a work item in the antecedent claims comprises selecting the work item that has a highest sum of the weighted business value and the weighted work item treatment value. Since it has been shown that Walker et al. and Bushey et al. do not disclose the computation of the weighted business value and the weighted work item treatment value as defined by the antecedent claims, the references cannot be deemed to disclose selection based on the sum of these (non-existent) values. The Examiner responded that "Walker does teach weighting 'the combination of the technicians and jobs for which the total of the technician/job cost values is a minimum' (column 7, lines 32-34), where the job costs are a part of a weighting that determines a minimum value."

The Examiner's response does not address applicant's argument. Even if the Examiner's assertion is completely accurate, it does not show that Walker et al. teach the summing of values recited in the subject claims. The sentence of Walker referenced by the Examiner, and whose meaning is expounded upon at Walker et al. column 7, lines 35 et seq., merely indicates that Walker et al. determine the cost value of each technician-and-job combination (doublet) and select the one with the lowest cost value. It does not disclose that two separate values (a weighted business value and a

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weighted work item treatment value) are computed and then summed to select the doublet with the highest sum. Hence, applicant's claims 17, 27/17, and 52 are not rendered unpatentable.

Applicant had pointed out previously that claims 20, 27/20 and 55 define a particular formula for the estimated wait time that a work item will have to wait for service. The wait time is defined as "a product of (a) a ratio of a total number of work items waiting for service and an average number of work items waiting for service, and (b) a sum of average wait times of individual said needed skills each weighted by a ratio of the weight of said individual skill and a sum of the weights of the needed skills." The Examiner retorted that "Bushey does teach the number of work items waiting for service 'the request from the customer is placed in a wait queue' (column 4, line 18). Since the 'customer is placed in a wait queue until the agent on a list of agents becomes available' (column 4, lines 18-19), the wait times of the individual customers is also known. With access to said date, counting the number of people in a wait queue and calculating the average wait time of a plurality of customers wait time is a trivial calculation and would be simple and very obvious to perform."

Once again, the Examiner's response does not address applicant's argument. Even if the Examiner's assertion is completely accurate, it does not show that Bushey et al. teach the particular wait-time estimation formula that is recited in these claims.

Applicant had pointed out that claims 21, 27/21, 31, 35, and 56 recite that, for each available work item that needs skills possessed by a resource, the business value is determined as "a sum across all skills of a product of a skill level of the resource in the skill and skill weight of the work item for the skill," and that these claims further recite that, for each available work item that needs skills possessed by a resource, the work item treatment value is determined "as a sum across all work item treatments of a product of the value of the work item for the work item treatment and a weight of the work item for the work item treatment." Applicant argued that no corresponding teachings

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may be found either in Walker et al. or in Bushey et al. The Examiner did not even address and respond to applicant's arguments. Hence, applicant's positions with respect to these claims stand unchallenged.

With respect to claims 22, 27/22, and 57, applicant had pointed out that these claims, dependent from claims 21 and 56, recite particular work item treatments, and since the references fail to disclose the formula of the antecedent claims 21 and 56 for computing work item treatment values, the references likewise do not disclose the use of particular work item treatments in this (non-existent) formula. The Examiner again did not address and respond to applicant's arguments. Hence, applicant's position with respect to these claims stands unchallenged.

Finally, applicant had pointed out that claims 23, 27/23, and 58 recite three different scaling factors and the application thereof to the computation of business value and work item treatment value, and that neither Walker et al. nor Bushey et al. disclose those particular scaling factors. The Examiner responded that one of the references "does teach the claimed sum of scaled business value in teaching a total cost. Total cost encompasses all factors that go into evaluating the value of each individual business and thereby using this value to compare all business values. Bushey also teaches a 'match score' (column 10, line 20) to compare agents with clients. A common element is the 'threshold match value' (column 10, line 38), which each customer does set individually and therefore provides a common frame of reference against which all agents can be measured."

As we have seen above so often, the Examiner's response does not address applicant's argument. Even if the Examiner's assertion is completely accurate, it still does not teach a business value scaling factor that is common to all work items, a work item value scaling factor that is common for that work item treatment to all of the determined work items, and a value sum scaling factor that is common to all of the determined work items across all work item

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treatments, as explicitly required by the claims. In short, the Examiner has once again failed to make a prima-facie case of unpatentability of these claims.

In view of the above remarks, it should be evident that the Examiner has not only failed to make a prima-facie case of unpatentability of applicant's claims, but that Walker et al. and Bushey et al. in fact do not render applicant's claims unpatentable. Applicant therefore requests that the Section 103(a) rejection of his claims over Walker et al. and Bushey et al. be withdrawn.

The rejection of the claims having been properly addressed and overcome, applicant suggests that the application is now in condition for allowance. Applicant therefore requests that the application be reconsidered and thereafter be passed to issue.

Applicant considers the foregoing to be dispositive of all issues in the application. But if the Examiner deems that a telephone interview would advance prosecution, applicant invites the Examiner to call his attorney at the number listed below.

Respectfully submitted,

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